IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No 191 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

KIRAN SHIP BREAKING CO.

Appearance:

1. TAX APPEAL No. 191 of 2003

MR TANVISH U BHATT for appellant No. 1

MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this appeal under Section 260A of the Income-tax Act, 1961, the following substantial question of law in respect of the assessment year 1995-96 has been raised for our consideration:

"Whether the Appellate Tribunal was right in law and on facts in allowing the deduction u/s. 80-IA to the assessee, holding that ship breaking activity gives rise to manufacturing and production of altogether a new article or thing?"

2. Heard Mr. Tanvish U. Bhatt, learned counsel for the revenue and Mr. R.K. Patel, learned counsel for the respondent - assessee.

3. Our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. In view of the aforesaid decision which squarely concludes the controversy against the assessee, we hold that the Tribunal was not right in allowing deduction under section 80-IA of the Income-tax Act, 1961, the provisions of which are similar to the provisions of Section 80-I of the Income-tax Act, 1961 for the purposes of the present controversy, because ship breaking activity does not amount to manufacturing or producing a new article or thing.

4. At this stage, Mr. R.K. Patel, learned counsel for the assessee, states that the aforesaid decision of this Court has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has granted leave to appeal and, therefore, he prays for certificate under section 261 of the Income-tax Act, 1961.

5. In view of the aforesaid statement that the SLP against the aforesaid decision is granted which statement is not disputed by the learned counsel for the revenue, we certify this to be a fit case for appeal to the Hon'ble Supreme Court.

6. We accordingly allow this appeal in aforesaid terms with no order as to costs.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)